

ATTACHMENT II
Text of Proposed New 19 TAC

Chapter 97. Planning and Accountability

Subchapter EE. Accreditation Status, Standards, and Sanctions

Division 2. Contracting to Partner to Operate a District Campus

§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.

- (a) Applicability. This section applies only to an independent school district that intends to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174 and §42.2511.
- (b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.
 - (1) Operating partner--Either a state-authorized open-enrollment charter school or an eligible entity as defined by TEC, §12.101(a).
 - (2) Open-enrollment charter holder--This term has the meaning assigned in TEC, §12.1012(1).
 - (3) Governing body of a charter holder--This term has the meaning assigned in TEC, §12.1012(2).
 - (4) Governing body of a charter school--This term has the meaning assigned in TEC, §12.1012(3).
 - (5) Contract to partner to operate a campus--This term means the partner must operate the campus in accordance with subsection (c) of this section under a performance contract as outlined in subsection (d) of this section.
 - (6) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
- (c) Conferred authority. In order to qualify as operating a district campus under TEC, §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner:
 - (1) initial and final authority to appoint the chief operating officer;
 - (2) initial and final authority for the operating partner to employ and manage the chief operating officer and all of its own administrators, educators, contractors, or other staff. Such authority includes hiring, assignment, evaluation, development, advancement, compensation, continuation, and establishment of any other terms of employment, as well as delegation of any and all managerial and operational authority;
 - (3) initial and final authority to approve the assignment of all district employees or contractors to the campus, as well as initial and final authority to rescind the assignment of any district employee or district contractor from the campus;
 - (4) initial and final authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus;
 - (5) initial and final authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations;
 - (6) initial and final authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;
 - (7) initial and final authority to approve all assessments that are not required by the state of Texas;

- (8) initial and final authority over the full campus operational budget by developing the campus budget. The governing body of the operating partner will approve the campus budget; and
 - (9) control of a majority of the education programs. The commissioner may determine whether the operating partner controls the majority of the education programs based on all the facts and circumstances.
- (d) Performance contract. To contract to partner to operate under TEC, §11.174, the independent school district's board of trustees must grant the operating partner a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, §12.0531. This performance contract must include, at a minimum, the following provisions:
 - (1) a description of enhanced authorities as outlined in subsection (c) of this section;
 - (2) annual academic performance expectations and goals, which shall include, but are not limited to:
 - (A) for campuses that are paired for accountability purposes, specific targets for student academic performance that are set to increase or maintain performance that is above average for the district;
 - (B) for campuses issued a direct accountability rating, specific targets for the campus accountability rating assigned by the TEA that are set to increase or maintain performance that is above average for the district; and
 - (C) specific consequences in the event that the operating party does or does not meet the annual academic performance expectations and goals described in the performance contract;
 - (3) annual financial performance expectations and goals, which shall include, but are not limited to:
 - (A) the completion of an annual financial report of the operating partner meeting the expectations outlined in §109.23 of this title (relating to School District Independent Audits and Agreed-Upon Procedures);
 - (B) receipt of an unqualified audit opinion, in connection with the annual financial report required in subparagraph (A) of this paragraph; and
 - (C) specific consequences in the event that the operating partner does or does not meet the annual financial performance expectations and goals described in the performance contract;
 - (4) a description of the campus enrollment and expulsion policies;
 - (5) a contract term of up to ten years as required by TEC, §12.0531, with a provision(s) specifying:
 - (A) a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and
 - (B) a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract;
 - (6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;
 - (7) service-level agreements that describe shared services of the district provided to the operating partner, which may include:
 - (A) facility use and related matters;
 - (B) transportation; and

- (C) specific education program services, such as providing a special education program.
- (8) a weighted per pupil allocation from the district to the operator that provides a student-level allocation of local, state, and federal funds received by the district;
- (9) a description of the educational plan for the campus; and
- (10) a description of the consequence(s) in the instance that either the district or the operating partner breaches the contract.
- (e) Contract notification to the TEA. In order to qualify as an eligible partnership under TEC, §11.174, notification of contracts related to TEC, §11.174(a)(1), must meet the guidance requirements and deadlines published by the TEA staff.
- (f) Contract amendments. Eligible partnerships under TEC, §11.174, must notify the TEA of amendments to performance contracts related to TEC, §11.174(a)(1) and (2).
- (g) Monitoring. In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership.
- (h) Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §42.2511, the operating partnership must continuously meet the requirements in subsection (c)-(g) of this section.
- (i) Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.

§97.1079. Determining Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174.

- (a) Applicability. This section applies only to independent school districts that intend to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174(a)(2).
- (b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.
 - (1) Eligible entity--This term has the meaning assigned in TEC, §12.101(a).
 - (2) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
 - (3) Applicant--This term refers to an independent school district seeking approval of an eligible entity to contract to partner to operate a campus.
 - (4) Proposed operating partner--This term refers to the eligible entity seeking approval in coordination with an independent school district to contract to partner to operate a campus.
- (c) Institutions of higher education. This subsection applies to entities meeting the definition of an institution of higher education as described in TEC, §61.003.
 - (1) For applicants seeking eligibility approval of an institution of higher education, which has been granted a charter in accordance with TEC, Chapter 12, Subchapter E, as the proposed operating partner, the commissioner of education will treat charter schools granted under TEC, Chapter 12, Subchapter E, as open-enrollment charter schools under TEC, §11.174(a)(1).
 - (2) All other institutions of higher education seeking eligibility approval will be held to the standards and processes described in TEC, Chapter 12, Subchapter E, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter).
 - (3) The commissioner may approve an application under this section if the commissioner determines that the approval of the application will improve student outcomes at the campus.
- (d) Private or independent institutions of higher education, non-profits, and governmental entities. This subsection applies to entities meeting the definitions described in TEC, §12.101(a)(2),(3) and (4).

- (1) Prior to each eligibility approval cycle, the commissioner shall approve an application form for submission by applicants seeking eligibility approval as specified in TEC, §11.174. The application form may contain, but is not limited to, any of the following:

 - (A) the timeline for eligibility approval;
 - (B) scoring criteria and procedures for use by the review panel selected under paragraph (4) of this subsection; and
 - (C) eligibility approval criteria, including the minimum score necessary for approval.
- (2) The Texas Education Agency (TEA) shall review applications submitted under this section. If the TEA determines that an application is not complete and/or the applicant does not meet the eligibility criteria in TEC, §11.174, the TEA shall notify the applicant and allow ten business days for the applicant to submit any missing or explanatory documents.

 - (A) If, after receiving missing or explanatory documents, the TEA determines that the application remains incomplete and/or the eligibility requirements of TEC, §11.174, have not been met, the application will be denied.
 - (B) If the documents are not timely submitted, the TEA shall remove the application without further processing. The TEA shall establish procedures and schedules for returning applications without further processing.
 - (C) Failure of the TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.
 - (D) A decision made by the TEA under this subsection to deny, remove, or return an application is a final administrative decision of the TEA and not subject to appeal under TEC, §7.057.
- (3) Upon written notice to the TEA, an applicant may withdraw an application.
- (4) Applicants with complete applications shall be reviewed by an external application review panel selected by the commissioner. The panel shall review applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of an application review. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an applicant, including any current or prospective employee, agent, officer, or director of the eligible entity, an affiliated entity, or other party with an interest in the approval of the application.
- (5) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.
- (6) All parts of the application are releasable to the public under the Texas Public Information Act, Texas Government Code, Chapter 552, and will be posted to the TEA website. Therefore, the following must be excluded or redacted from an application:

 - (A) personal email addresses;
 - (B) proprietary material;
 - (C) copyrighted material;
 - (D) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the partnership school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and
 - (E) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

- (7) TEA staff may interview applicants whose applications received the minimum score established in the application form, may specify individuals required to attend the interview, and may require the submission of additional information and documentation prior or subsequent to an interview.
- (8) The commissioner will consider criteria that include the following when determining whether to approve an applicant.
 - (A) The criteria described in this subparagraph apply to all campuses. Each applicant must demonstrate:
 - (i) evidence of a high-quality district charter authorizing process as required by TEC, §12.058, which may include, but is not limited to, the following:
 - (I) the district's adoption and implementation of an authorizing policy;
 - (II) the district's adoption and implementation of a charter application, including, but not limited to, the evaluation of:
 - (-a-) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the governance, management, and educational leadership of the proposed operating partner; and
 - (-b-) any history of the proposed operator; and
 - (III) the district's adoption and implementation of codified procedures for monitoring and reviewing in-district charters;
 - (ii) evidence that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174) and that the proposed operating partner has the capacity to operate the campus. This evidence will include the following:
 - (I) the local charter application submitted to the board of trustees process as required by TEC, §12.058;
 - (II) the performance contract governing the operations of the campus as required by TEC, §12.0531; and
 - (III) the local charter as required by TEC, §12.059; and
 - (iii) evidence that the governing body of the operating partner shall remain independent of the independent school district. This may include, but is not limited to, the following:
 - (I) an assurance that the governing body of the operating partner is not and shall not be comprised of any members of the independent school district's board of trustees or staff;
 - (II) an assurance that no member of the governing body of the operating partner will be related within the first degree of affinity or consanguinity with any member of the school district staff or any member of the school district's board of trustees;
 - (III) an assurance that all members of the governing body of the operating partner have passed and will continually pass the district's conflict of interest checks; and
 - (IV) an assurance that the district has not appointed a majority of the members of the governing board of the operating partner.
 - (B) The criteria described in this subparagraph apply to a campus that received an overall performance rating of unacceptable for the school year before operation of the district

campus. In addition to the criteria described in subparagraph (A) of this paragraph, the commissioner will consider the following:

- (i) evidence that the proposed operating partner has the capacity to operate the campus, including the following:
 - (I) items considered by the district during its authorizing process;
 - (II) an operational plan;
 - (III) a staffing and management plan; and
 - (IV) a community and family engagement plan; and
- (ii) evidence of financial competency and sustainability by providing evidence of an appropriate financial plan, including the following:
 - (I) a financial plan and narrative for the campus;
 - (II) a five-year budget projection of revenue and expenditures for operations by the proposed operating partner; and
 - (III) support documentation for budget projections as detailed in the budget template that will be provided with the application.

- (e) Decision finality. Notwithstanding any other provisions, the commissioner may approve an application under this section if the commissioner determines that the approval of the application will improve student outcomes at the campus. The approval or denial of the application is a final administrative decision by the commissioner and not subject to appeal under TEC, §7.057.